

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MARCUS BURRELL,  
  
                                Petitioner,  
  
                v.  
  
WARDEN, HIGH DESERT STATE  
PRISON, et al.,  
  
                                Respondents.

---

Case No. 2:18-cv-00037-JCM-CWH

**ORDER**

Petitioner has submitted an application to proceed in forma pauperis (ECF No. 1) and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court finds that petitioner is unable to pay the filing fee. The court has reviewed the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The court will serve the petition upon respondents for a response.

Petitioner has filed a motion for appointment of counsel (ECF No. 2). Whenever the court determines that the interests of justice so require, counsel may be appointed to any financially eligible person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). “[T]he district court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved.” Weygandt v. Look, 718 F.2d 952 (9th Cir. 1983). There is no constitutional right to counsel in federal

1 habeas proceedings. McCleskey v. Zant, 499 U.S. 467, 495 (1991). The factors to consider are  
2 not separate from the underlying claims, but are intrinsically enmeshed with them. Weygandt,  
3 718 F.2d at 954. The court finds that appointment of counsel is not warranted.

4 IT THEREFORE IS ORDERED that the application to proceed in forma pauperis (ECF  
5 No. 1) is GRANTED. Petitioner need not pay the filing fee of five dollars (\$5.00).

6 IT FURTHER IS ORDERED that the clerk of the court shall file the petition for a writ of  
7 habeas corpus pursuant to 28 U.S.C. § 2254.

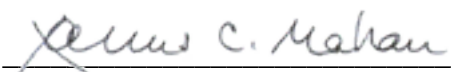
8 IT FURTHER IS ORDERED that the clerk shall add Adam Paul Laxalt, Attorney General  
9 for the State of Nevada, as counsel for respondents.

10 IT FURTHER IS ORDERED that the clerk shall electronically serve upon respondents a  
11 copy of the petition and this order. In addition, the clerk shall return to petitioner a copy of the  
12 petition.

13 IT FURTHER IS ORDERED that respondents shall have forty-five (45) days from the  
14 date on which the petition was served to answer or otherwise respond to the petition.  
15 Respondents shall raise all potential affirmative defenses in the initial responsive pleading,  
16 including untimeliness, lack of exhaustion, and procedural default. Successive motions to dismiss  
17 will not be entertained. If respondents file and serve an answer, then they shall comply with Rule  
18 5 of the Rules Governing Section 2254 Cases in the United States District Courts, and then  
19 petitioner shall have forty-five (45) days from the date on which the answer is served to file a  
20 reply. If respondents file a motion, then petitioner will have fourteen (14) days to file a response  
21 to the motion, and respondents will have seven (7) days from the date of filing of the response to  
22 file a reply.

23 IT FURTHER IS ORDERED that, notwithstanding Local Rule LR IC 2-2(g) paper copies  
24 of any electronically filed exhibits need not be provided to chambers or to the staff attorney,  
25 unless later directed by the Court.

26 DATED: May 29, 2018.

27   
28 JAMES C. MAHAN  
United States District Judge